IN THE

Supreme Court of the United States

MAY TERM, 1979

No. 78-1843

WALLACE J. SCHONWALD,

Petitioner,

v.

STATE OF NEW JERSEY,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY

MORTON BERGER
13 Eastbourne Drive
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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF NEW JERSEY

Undersigned Counsel, on behalf of the Petitioner, Wallace J. Schonwald, petitions for a Writ of Certiorari to review the judgment of the Appellate Division of the Superior Court of New Jersey in this case entered on December 7, 1978, which affirmed the judgment of the Superior Court of New Jersey, Law Division, Morris County, convicting the Petitioner of one Count of Misconduct in Office in violation of N.J.S. 2A: 85-1 and one Count of Solicitation of a bribe in violation of N.J.S. 2A: 93-6.

A petition for rehearing and determination en banc was made on December 14, 1978, which petition was denied on December 21, 1978. On March 13, 1979, the Supreme Court of New Jersey denied a timely petition for certification. Petitioner surrendered on April 2, 1979.

Opinions Below

The opinion of the Appellate Division of the Superior Court of New Jersey (Pet. App. A, Infra, p. 1a) is not reported. The decision of the Appellate Division of the Superior Court of New Jersey denying Petitioner's petition for a rehearing and determination en banc (Pet. App. B, Infra, p. 3a) is not reported. The decision of the Supreme Court of the State of New Jersey denying Petitioner's petition for certification (Pet. App. C, Infra, p.) is not reported.

Jurisdiction

The judgment of the Appellate Division of the Superior Court of New Jersey was entered on December 7, 1978 (Pet. App. A, Infra, pp. 1a-2a). On December 21, 1978, the Appellate Division denied a timely petition for rehearing and determination en banc (Pet. App. B, Infra, p. 3a). On March 13, 1979 the Supreme Court of the State of New Jersey denied a timely petition for Certification (Pet. App. C, Infra, p. 4a).

The jurisdiction of this Court is invoked under *Title 28 United States Code, Section 1257 (3).*

Question Presented

Whether the Petitioner's privilege against self-incrimination was violated by the trial court's denial of Petitioner's motion to suppress certain extra judicial statements made by him in response to State Agents declarations directed to him while he was detained at Police Headquarters by State Police and Agents of the Attorney General's Office for the purpose of executing a search of his person and property pursuant to a search warrant as the Petitioner was not given his *Miranda* warnings at any time prior to the conclusion of the search.

Statement of Case

The petitioner was a Civil Service employee who was employed as an Engineer by the Department of Transportation of the State of New Jersey. He was charged in a two count indictment with the crimes of Misconduct in Office in violation of *N.J.S.A.* 2A: 85-1 and with solicitation of a bribe in violation of *N.J.S.A.* 2A: 93-6.

In substance the indictment alleges that the Petitioner had solicited and received certain money from Louis Ripa and the engineering firm of Porter and Ripa Associates in exchange for favorable treatment promised to Louis Ripa by Petitioner in his capacity as an employee of the Department of Transportation of the State of New Jersey.

Louis Ripa reported the alleged solicitation by Petitioner to the office of the Attorney General on or about June 4, 1976 and thereafter, from June 11, 1976 to and including July 15, 1976, the Petitioner was the target of a criminal investigation and was under surveillance by agents of the State Attorney General.

During the period from June 11, 1976, the State recorded six conversations between the Petitioner and Louis Ripa and had arranged to have Louis Ripa pay the Petitioner $3,500.00 on June 18, 1976 and $14,000.00 on July 15, 1976. The payment of $14,000.00 was made by Louis Ripa to the Petitioner at the office of Porter and Ripa Associates on July 15, 1976. The entire transaction was recorded by State Agents who had supplied Louis Ripa with the money. On July 15, 1976, prior to the consummation of the alleged transaction, State agents had obtained a search warrant to search the Petitioner and his property and had reserved a room in Troop B Headquarters of the Morristown Police where the Petitioner was to be searched and interrogated. As Petitioner left the office of Porter and Ripa Associates his automobile was stopped by a uniformed policeman who directed him to proceed to

Troop B Headquarters where he was met by agents of the office of the Attorney General and other police officers. He was taken to a room in the police station where he was shown the search warrant and was detained for purposes of the search. It is uncontested that Petitioner was detained in a police dominated atmosphere for the purpose of being searched. It is uncontroverted that State agents made statements to the Petitioner while he was so detained and that it was expected by those agents that Petitioner would make a statement or statements in response. It is also uncontroverted that the Petitioner was not given his Miranda warnings or for that matter, any kind of warning prior to the State agents showing Petitioner the search warrant and their intentionally making statements to the Petitioner which resulted in answers given by the Petitioner. The Petitioner made a motion to suppress these statements and answers and after the Court conducted a suppression hearing, the motion was denied. The very statements and responses made by the Petitioner during the search were introduced in evidence by the State.

It is the contention of the Petitioner that the denial of his motion to suppress violated his constitutional privilege against self-incrimination as enunciated in the case of *Miranda* v. *United States,* 384, U.S. 436, 86 S. Ct. 1602 (1966) and its progeny.

It is the contention of the State that as the Petitioner was not formally arrested and was not interrogated in the conventional sense, it was unnecsssary to give him his *Miranda* warnings.

Argument in Support of Petition for Writ of Certiorari

It is uncontroverted that the Petitioner was detained and in custody during his search at Troop B Headquarters of

the Morristown Police. The contention of the State that it was not necessary to give the Petitioner his *Miranda* warnings during the search because he was not formally arrested is without merit. During the search the Petitioner was in custody. In *Miranda* v. *United States,* Supra, the Court stated:

> "By custodial interrogation, we mean questioning initiated by law enforcement officers after a person has been taken into custody *or otherwise deprived of his freedom of Action in any significant way*" (Italics Supplied).

During the search, Petitioner was detained, in custody and deprived of his freedom of action in a significant way. It is clear that custody in the *Miranda* sense does not necessitate a formal arrest nor does it require physical restraint in a police station, nor the application of handcuffs and may occur in a suspect's home or a public place other than a police station. *Arozco* v. *Texas,* 394 U.S. 324, 89 S. Ct. 1095 (1969); *State* v. *Graves,* 60 N.J. 441 (1972); *State* v. *Seefeldt,* 51 N.J. 472 (1968).

Custody in the *Miranda* sense having been established, the remaining question is whether the Petitioner was interrogated. During the suppression hearing Deputy Attorney General Bozza testified that statements were made to the Petitioner during the search concerning the subject matter of the search and that he expected the Petitioner to respond to those statements and to his being shown the search warrant. The statements made by the Petitioner related to the subject matter of the investigation and were introduced in evidence against him during the trial. The Petitioner's statements were not volunteered or spontaneous but were the result of the impelling influences which were exerted by the agents to bring about the statements during a time he was in custody. It is implicit that interrogation in the concept of *Miranda* need not be of the

question and answer type. *State* v. *Godfrey*, 131 N.J. Supra 168 (1974). The principles set forth in *Miranda* cannot be circumvented by trickery or device calculated to obtain statements, admissions or confessions while avoiding the asking of direct questions. It is common knowledge that statements such as accusations can illicit responses more readily than interrogation in the ordinary sense.

The facts in this case present an important question of law of first impression. Law enforcement agencies and the Judiciary require guidelines to be established by this court with regard to procedures to be followed to protect an individual's privilege against self-incrimination during a search of his person pursuant to a search warrant. It is within the realm of an ordinary man's experience that an individual who is confronted with a search warrant will probably make some statement unless he is warned of the legal consequences of doing so.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

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Attorney for Petitioner

Appendix A, Judgment, Superior Court of New Jersey Appellate Division.

NOT FOR PUBLICATION WITHOUT THE APPROVAL OF THE COMMITTEE ON OPINIONS

A-4076-76

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

WALLACE J. SCHONWALD,

Defendant-Appellant.

Argued: November 28, 1978—Decided: Dec 7 1978

Before Judges Matthews, Kole and Milmed.

On appeal from Superior Court, Law Division, Morris County.

Mr. Morton Berger, a member of the New York Bar, argued the cause for appellant.

Ms. Anne C. Paskow, Deputy Attorney General, argued the cause for respondent (Mr. John J. Degnan, Attorney General of New Jersey, attorney).

PER CURIAM

Defendant was convicted by a jury of misconduct in office contrary to *N.J.S.A.* 2A:85-1 (count 1 of the indict-

ment) and solicitation of a bribe contrary to *N.J.S.A.* 2A:93-6 (count 2). He appeals.

Defendant raises the following contentions as grounds for reversal of his conviction:

1. The trial court erred in denying his motion to suppress statements made by him to agents of the State Police and the Attorney General.
2. The trial court erred in denying his request that he be permitted to place in evidence the results of a polygraph test taken by George Keller, a defense witness, at the request of the State and administered by a State Police officer.
3. Count 1 of the indictment, which alleges misconduct in office, is defective as it incorporates allegations which do not constitute the crime of misconduct in office.
4. With regard to count 1 of the indictment, the verdict is contrary to the weight of the evidence and is not supported by substantial evidence.
5. Count 2 of the indictment should have been dismissed because it is indefinite, ambiguous, and duplicitous.
6. With regard to count 2 of the indictment, the verdict is contrary to the weight of the evidence and is not supported by substantial evidence.
7. The refusal of the trial court to grant any part of his motion for a bill of particulars was an abuse of discretion.
8. The trial court erred by rejecting his offer of proof of prior consistent statements made by him.

We have carefully reviewed the record in the light of applicable law. We are satisfied that there is plainly no merit to any of the contentions advanced by defendant on this appeal. *R.* 2:11-3(e)(2).

Affirmed.

A True Copy
Elizabeth McLaughlin
Clerk

Appendix B, Order on Motions/Petitions.

SUPERIOR COURT OF NEW JERSEY
Appellate Division

Docket No. A-4076-76
Motion No. M-1576-78
Before Part G
Matthews
Kole
Milmed

State of New Jersey

vs

Wallace Schonwald

Moving Papers Filed	December 14, 1978
Answering Papers Filed	
Date Submitted to Court	December 18, 1978
Date Argued	
Date Decided	December 21, 1978

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS HEREBY ORDERED AS FOLLOWS:

	GRANTED	DENIED	OTHER
MOTION FOR REHEARING in A-4076-76		X	

SUPPLEMENTAL:

I hereby certify that the foregoing is a true copy of the original on file in my office.

ELIZABETH MCLAUGHLIN
Clerk

FOR THE COURT:

(Illegible)
P.J.A.D.

WITNESS, THE HONORABLE ROBERT A. MATTHEWS, PRESIDING JUDGE OF PART G, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, 21 DAY OF DECEMBER 1978.

ELIZABETH MCLAUGHLIN
CLERK OF THE APPELLATE DIVISION

ORIGINAL FILED
DEC 21 1978
ELIZABETH MCLAUGHLIN
Clerk

Appendix C, Order Denying Petition for Certification.

SUPREME COURT OF NEW JERSEY

C-509 SEPTEMBER TERM 1978

ON PETITION FOR CERTIFICATION

STATE OF NEW JERSEY,
Plaintiff-Respondent,

vs.

WALLACE J. SCHONWALD,
Defendant-Petitioner.

To Appellate Division, Superior Court:

A petition for certification having been submitted to this Court, and the Court having considered the same,

It is hereupon ORDERED that the petition for certification is denied with costs.

WITNESS, the Honorable Worrall F. Mountain, Presiding Justice, at Trenton, this 13th day of March, 1979.

STEPHEN W. TOWNSEND
Clerk

FILED
MAR 13 1979
STEPHEN W. TOWNSEND
Clerk

A TRUE COPY

STEPHEN W. TOWNSEND
Clerk

Appendix D, Order on Motions/Petitions.

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

DOCKET NO. A-4076-76
MOTION NO. M-1575-78

BEFORE PART G

MATTHEWS
KOLE
MILMED

STATE OF NEW JERSEY

VS

WALLACE J. SCHONWALD

MOVING PAPERS FILED	DECEMBER 14, 1978
ANSWERING PAPERS FILED	DECEMBER 20, 1978
DATE SUBMITTED TO COURT	DECEMBER 18, 1978
DATE ARGUED	
DATE DECIDED	DECEMBER 21, 1978

ORDER

THIS MATTER HAVING BEEN DULY PRESENTED TO THE COURT, IT IS HEREBY ORDERED AS FOLLOWS:

	GRANTED	DENIED	OTHER
MOTION FOR CONTINUANCE OF BAIL AND STAY OF MANDATE PENDING REHEARING, ETC.	X		

Appendix D, Order on Motions/Petitions.

SUPPLEMENTAL: Until the Supreme Court of New Jersey passes on defendant's petition for certification.

I hereby certify that the foregoing is a true copy of the original on file in my office.

ELIZABETH MCLAUGHLIN
Clerk

FOR THE COURT:
(Illegible)
P.J.A.D.

WITNESS, THE HONORABLE ROBERT A. MATTHEWS, PRESIDING JUDGE OF PART G, SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION, THIS 21 DAY OF DECEMBER 1978.

ELIZABETH MCLAUGHLIN
CLERK OF THE APPELLATE DIVISION

ORIGINAL FILED
DEC 21 1978
ELIZABETH MCLAUGHLIN
Clerk

IN THE

Supreme Court of the United States

MAY TERM, 1979

No. 78-1843

WALLACE J. SCHONWALD,

Petitioner,

v.

STATE OF NEW JERSEY,

Respondent.

On Petition for a Writ of Certiorari to the Superior Court of New Jersey, Appellate Division

RESPONDENT'S BRIEF IN OPPOSITION

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IN THE

Supreme Court of the United States

MAY TERM, 1979

No. 78-1843

WALLACE J. SCHONWALD,

Petitioner,

v.

STATE OF NEW JERSEY,

Respondent.

On Petition for a Writ of Certiorari to the Superior Court of New Jersey, Appellate Division

RESPONDENT'S BRIEF IN OPPOSITION

The respondent State of New Jersey respectfully requests that this Court deny the petition for writ of certiorari, seeking review of the Superior Court of New Jersey, Appellate Division's opinion in this case.

Opinions Below

The New Jersey Supreme Court's order denying petitioner's petition for certification is reported at —— N.J. ——, —— A.2d —— (March 13, 1979) and appears as peti-

tioner's appendix C, page 11. The order of the Superior Court of New Jersey, Appellate Division denying petitioner's motion for rehearing, not reported, appears as petitioner's appendix B, pages 9 to 10. The opinion of the Appellate Division, not reported, appears as petitioner's appendix A, pages 7 to 9. As to the issue raised in the instant petition, the Appellate Division summarily affirmed, pursuant to New Jersey Court Rule 2:11-3(e)(2). The Superior Court of New Jersey, Law Division, Morris County, did not issue a written opinion; its oral ruling with respect to the issue raised herein appears in the trial transcript of April 20, 1977 (2R20-1 to 21).*

Constitutional Provisions, Statutes and Rules Involved

United States Constitution, Amendment V

OF CRIMES AND INDICTMENTS

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger, nor shall any person be subject, for the same offense, to be twice put in jeopardy of life and limb; nor shall be compelled in any criminal case to be witness against himself; nor to be deprived of life, liberty or property, with due process of law, nor shall private property be taken for public use, without just compensation. [U.S. Const. amend. V]

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*1R refers to the record below, transcript April 19, 1977. 2R refers to the record below, transcript of April 20, 1977.

New Jersey Statutes Annotated 2A:85-1. Offenses indictable at common law and not otherwise covered, punishable as misdemeanors.

> Assaults, batteries, false imprisonments, affrays, riots, routs, unlawful assemblies, nuisances, cheats, deceits, and all other offenses of an indictable nature at common law, and not otherwise expressly provided for by statute, are misdemeanors. [N.J. S.A. 2A:85-1 (West, 1969, page 7)]

New Jersey Statutes Annotated 2A:93-6. Giving or accepting bribes in connection with government work, service, etc.

> Any person who directly or indirectly gives or receives, offers to give or receive, or promises to give or receive any money, real estate, service or thing of value as a bribe, present or reward to obtain, secure or procure any work, service, license, permission, approval or disapproval, or any other act or thing connected with or appertaining to any office or department of the government of the state or of any county, municipality or other political subdivision thereof, or of any public authority, is guilty of a misdemeanor. [N.J.S.A. 2A:93-6 (West, 1969, page 147)]

New Jersey Court Rule 2:11-3(e)(2). Opinion Judgment; Stay After Judgment; Affirmance without Opinion.

> *Criminal Appeals.* When in a criminal appeal the Appellate Division determines that some or all of the issues raised by the defendant are clearly without merit, the court may affirm by an opinion which, as to such issues, specifies them and quotes this rule and paragraph. [R. 2:11-3(e)(2) (Gann ed. 1979, page 343)]

Question Presented

It is the State's position that the facts of record do not permit formulation of the question as stated by petitioner and that this case presents no real question warranting review by this Court.

Statement of the Case

State Grand Jury Indictment No. SGJ-35-76-5, filed on August 19, 1976, charged petitioner Wallace J. Schonwald with misconduct in office, N.J.S.A. 2A:85-1 (Count One) and solicitation of a bribe, N.J.S.A. 2A:93-6 (Count Two). He was tried before the Honorable Charles M. Egan, Jr., Judge of the County Court (temporarily assigned to Superior Court), and a jury from April 18 through May 4, 1977 and was found guilty on both counts.

The State's proofs established that petitioner, a former New Jersey Department of Transportation official, solicited and received large sums of money from Louis C. Ripa, former president and major shareholder in Porter and Ripa Associates, an engineering, planning and architectural design firm which did extensive business with the Department of Transportation, in exchange for past, present and future favorable treatment promised by petitioner in his capacity within that department. The unsuccessful defense theory advanced by petitioner at trial was that he had been legitimately employed by Ripa and the Porter and Ripa firm and had earned the sums of money involved.

The State's evidence primarily consisted of testimony from Ripa, who following petitioner's initial demand for money reported the incident to the State Attorney General and assisted in the subsequent investigation, and tape

recordings of portions of the conversations between Ripa and petitioner on the five occasions they met from June 16 to July 15, 1976. At those meetings, petitioner pursued his solicitation demands, and Ripa actually delivered to him in compliance with those demands the sums of $3,500 on June 18 and $14,000 on July 15, 1976, using funds supplied by the State for this purpose. As petitioner left the July 15, 1976 meeting, he was stopped and detained by State agents who executed a previously obtained search warrant. Contradictory exculpatory statements made by petitioner during and following the search were also admitted into evidence by the State.

Pursuant to petitioner's motion to suppress these extrajudicial statements, a voluntariness (*Miranda*) hearing was held prior to trial at which time the following information was elicited from Deputy Attorney General Bozza, the sole witness. As petitioner drove from the Porter and Ripa parking lot on July 15, 1976 following his meeting with Ripa wherein he received a $4,000 check and $10,000 cash, his vehicle was followed by Detective Ottens and Bozza. By prearrangement, a uniformed trooper approached petitioner's vehicle as it stopped at a nearby traffic light and directed petitioner to the adjacent police barracks parking lot. Petitioner, followed by Bozza and Ottens, drove into the lot (1R46-16 to 48-15). Ottens made introductions and requested petitioner to accompany them inside, and petitioner agreed (1R49-3 to 18).

Inside, introductions were again made (including Deputy Attorney General Cox who had joined them), and a valid search warrant authorizing a search of petitioner's person and vehicle for the check and cash was produced and explained to him. He was told he would be detained for a short period pursuant to the warrant and that they would be looking for a $4,000 check and $10,000 in cash.

To this petitioner announced that he knew nothing about the cash and that he "had worked for" the check. He voluntarily produced the check (1R50-5 to 13). These remarks were not in response to questions, and petitioner was cautioned not to volunteer information (1R50-14 to 21).

Next, petitioner's person was searched, revealing nothing pertinent (1R50-25 to 51-13). Petitioner reiterated several times that he knew nothing of the $10,000, and he was repeatedly advised not to volunteer information (1R51-16 to 52-2). Thereafter everyone went outside where petitioner's vehicle was searched in his presence and the $10,000 was found (1R52-3 to 11).

Back inside, the money was counted and Bozza advised petitioner that in their opinion they "had enough" to arrest him for the commission of a crime but that he was *not* going to be arrested and the evidence would be presented to the Grand Jury. He was told "he was free to leave because the search had ended" (1R53-18 to 23). Petitioner was then told that Bozza wished to ask him questions, and he was advised that he did not have to answer questions, that if he did answer the questions anything he said could be used as evidence against him and that if he wanted to contact a lawyer and have the lawyer present during the course of the conversation he was free to do so (1R53-23 to 54-4). Since petitioner was not arrested and was free to leave at any time, he was not told that an attorney would be appointed for him if he were unable to afford one (1R54-22 to 55-13).

Thereupon petitioner was questioned. During the interview, he took alternative positions regarding the $10,000 and maintained that the $4,000 had been legitimately earned (See 1R56-10 to 23). Petitioner was told his stories were not believable, and portions of previously

taped conversations were played for him to demonstrate this. Several times Bozza attempted to terminate the interview. Despite this, petitioner insisted on staying and trying to exculpate himself (1R57-3 to 12). At the conclusion of the interview which lasted approximately one and a half hours, petitioner left unhindered and unarrested (1R59-10 to 23).

In denying petitioner's motion to suppress, the trial court ruled:

> [T]he totality of the circumstances here satisfies me as the finder of the fact for the purposes of this motion that Mr. Schonwald, first, was told not to volunteer any statements, secondly, he was told more than once that he was free to leave. In fact, he was almost advised or urged or begged to leave. I believe, as I already stated, that Mr. Bozza's terminology was something about practically chasing him out of headquarters.
>
> Finally, I have absolutely no reason in the world to believe that if Mr. Schonwald had said at the outset: You say I'm not under arrest, well, then, I'm getting out of here as fast as I can, no one would have stopped him from doing it.
>
> Under those circumstances, I cannot conclude that there was any violation of the defendant's rights by failing to give him the full *Miranda* warnings, and I'm satisfied that what he said was said voluntarily. (2R20-1 to 18).

Thereafter, petitioner was tried to a jury and convicted of misconduct in office and bribery solicitation. The judgment of conviction was entered on August 19, 1976, and petitioner was sentenced to concurrent two to

three year terms at the New Jersey State Prison and fined $2,000. The Superior Court of New Jersey, Appellate Division affirmed petitioner's conviction pursuant to New Jersey Court Rule 2:11-3(e)(2) on December 7, 1978, and denied his motion for rehearing on December 21, 1978. The New Jersey Supreme Court denied his petition for certification on March 13, 1979. Petitioner has been incarcerated pursuant to the instant sentence since April 4, 1979.

REASONS FOR DENYING CERTIORARI

POINT I

The facts of record do not permit the formulation or resolution of the question stated by petitioner.

The four-fold warnings enunciated in *Miranda* v. *Arizona*, 384 U.S. 436, 86 S.Ct. 1602, 16 L.Ed.2d 694 (1966), need only be administered to and waived by an individual when he is subjected to State initiated custodial interrogation. During the period while petitioner was detained so that the search warrant could be executed he was not subjected to any questioning and was repeatedly cautioned not to volunteer information whenever he gratuitously made a statement concerning the check or cash. *Miranda* warnings are not required where statements made are volunteered and do not result from police questioning or remarks. *Miranda* v. *Arizona*, 384 U.S. at 478, 86 S.Ct. at 1630, 16 L.Ed. 2d at 726; *State* v. *Slobodian*, 120 N.J. Super. 68, 74-75, 293 A.2d 399, 402-403 (App. Div. 1972), certif. den. 62 N.J. 77, 299 A.2d 75 (Sup. Ct. 1972), bail den. 409 U.S. 909, 93 S.Ct. 212, 34 L.Ed.2d 170 (1972). Even if such statements are made while the defendant is in custody, the *Miranda* rule is

not brought into play if the statements are unsolicited and not the result of any interrogation. *State* v. *Gallicchio*, 51 N.J. 313, 240 A.2d 166 (Sup. Ct. 1968), *cert.* den. 393 U.S. 912, 393 S.Ct. 233, 21 L.Ed.2d 198 (1968); *State* v. *Gosser*, 50 N.J. 438, 445-446, 236 A.2d 377, 381 (Sup. Ct. 1967), *cert.* den. 390 U.S. 1035, 88 S.Ct. 1434, 20 L.Ed.2d 295 (1968).

From the time the actual search was completed and the recovered money counted petitioner's presence at the police barracks was entirely voluntary. He was not under arrest or otherwise detained or deprived of his freedom, and he was free to go wherever and whenever he pleased. Compare with *Orozco* v. *Texas*, 394 U.S. 324, 89 S.Ct. 1095, 22 L.Ed.2d 311 (1969). The questioning of a suspect at a police station need not be preceded by the *Miranda* warnings so long as the suspect is not subjected to such a restriction of his freedom as to render him in custody. *Oregon* v. *Mathiason*, 429 U.S. 492, 97 S.Ct. 711, 50 L.Ed.2d 714 (1977). While some doubt exists as to precisely what circumstances short of an actual arrest will trigger the warning requirements of *Miranda*, *State* v. *Godfrey*, 131 N.J. Super. 168, 176, 329 A.2d 75, 79 (App. Div. 1974), aff'd o.b. 67 N.J. 267, 337 A.2d 371 (Sup. Ct. 1975), at the very least, the State must engage in such conduct as would lead the individual to reasonably believe that he is being significantly deprived of his freedom at the time of questioning. See *Iverson* v. *State of North Dakota*, 480 F.2d 414, 422-423 (8 Cir. 1973), *cert.* den. 414 U.S. 1044, 94 S.Ct. 549, 38 L.Ed.2d 335 (1973); *United States* v. *Hall*, 421 F.2d 540 (2 Cir. 1969), *cert.* den. 397 U.S. 990, 90 S.Ct. 1123, 25 L.Ed.2d 398 (1970). Petitioner, however, was specifically advised he was free to leave prior to being questioned, was specifically advised that he need not answer

questions, that his answers could be used against him and that he was entitled to secure an attorney and have him present during any questioning, and was practically forced to terminate the interview and leave the station. Under such circumstances it is manifest that petitioner's statements were not obtained in violation of the *Miranda* decision or his Fifth Amendment right against self-incrimination.

The facts of record, as determined by the trial court, do not permit formulation and resolution of the question stated by petitioner. Petitioner's unsolicited statements during the search were not the result of State questioning or interrogation within the meaning of *Miranda* v. *Arizona* and its progeny, and petitioner's responses to questions following the search were not obtained in a custodial situation within the meaning of *Miranda* v. *Arizona* and its progeny.

CONCLUSION

For the reasons set forth herein, it is respectfully urged that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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